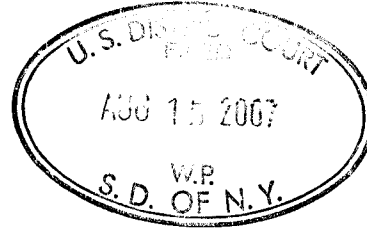


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
JESUS GARICA, as Administrator of, :  
the estate of ANGEL GARCIA, :  
deceased, :

Plaintiff, :

-against- :

ANEES AHMAD, M.D., JOHN PODESZWA, :  
M.D., and ORANGE REGIONAL MEDICAL :  
CENTER, :

Defendants. :

-----X

ORDER OF DISMISSAL

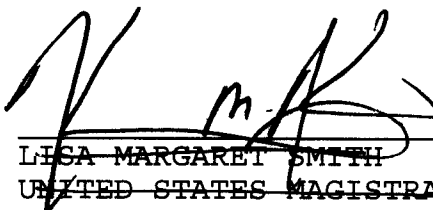
(KMK)  
07 Civ. 6891 (WP4) (LMS)

Index No. 8326/07  
(Supreme Court of the  
State of New York)

IT IS HEREBY ORDERED that the above-captioned action, which was erroneously removed from New York State Supreme Court, Bronx County, in the absence of federal subject matter jurisdiction, is dismissed and the matter returned to the New York State Supreme Court, Bronx County.

SO ORDERED.

Dated: August 13, 2007  
White Plains, New York

  
\_\_\_\_\_  
LISA MARGARET SMITH  
UNITED STATES MAGISTRATE JUDGE  
U.S. D.J.



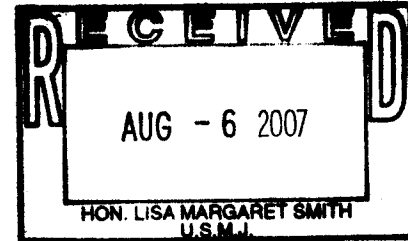
United States Attorney  
Southern District of New York

86 Chambers Street, 3rd Floor  
New York, New York 10007

August 2, 2007

**BY FEDERAL EXPRESS**

Honorable Lisa Margaret Smith  
United States Magistrate Judge,  
Southern District of New York  
United States Courthouse, Room 428  
300 Quarropas Street  
White Plains, New York 10601-4150



Re: Garcia v. Ahmad, et al.,  
07 Civ. 6891 (WP4) (LMS)

Dear Judge Smith:

We write respectfully regarding the above-captioned medical malpractice matter which, as discussed below, the Government erroneously removed from New York Supreme Court, Bronx County, on July 31, 2007.

The Government removed this matter on the ground that one of the defendants, Dr. Anees Ahmad, was deemed to be an employee of the United States pursuant to the Public Health Service Act, 42 U.S.C. § 201 et seq., and that the Federal Tort Claims Act therefore provided exclusive jurisdiction over plaintiff's claims. Unbeknownst to the Government at the time it filed its notice of removal, on or about May 8, 2007, the plaintiff filed a Voluntary Notice of Discontinuance against Dr. Ahmad (a copy of this notice is attached hereto). As such, Dr. Ahmad was not a party to the state court action at the time of removal, and there was no jurisdictional basis for the Government to have removed this action. Accordingly, we respectfully request that the Court dismiss the case, and remand the matter to state court. As a convenience to the Court, we enclose a proposed order.

Thank you for your consideration of this request.

Hon. Lisa M. Smith  
page 2

August 3, 2007

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney  
for the Southern District of New York  
Attorney for United States of America

By: *Andrew M. McNeela*  
ANDREW M. McNEELA  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Telephone: (212) 637-2741  
Facsimile: (212) 637-2786

cc: BY FEDERAL EXPRESS

✓ Matthew J. Maiorana, Esq.  
Queller, Fisher, Dienst, Serrins,  
Washor, & Kool, LLP  
Attorneys for Plaintiff  
233 Broadway  
New York, NY 10279

*- no objections*

Martin Clearwater & Bell  
245 Main Street - 5<sup>th</sup> Floor  
White Plains, N.Y. 10601

John Podeszwa, M.D.  
419 E. Main street  
Middletown, New York 10940

Orange Regional County Medical Center  
60 Prospect Avenue  
Middletown, NY 10940

*hospital org (Mr. Barbera)*  
*Dr. Podeszwa*  
*914-328-2969*

*other Δ;  
no complete  
removal?*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
JESUS GARCIA, as Administratrix of the Estate of ANGEL  
GARCIA, deceased,

Index No.: 8326/07

Plaintiff,

-against-

NOTICE OF VOLUNTARY  
DISCONTINUANCE AS TO  
ANEES AHMAD, M.D.

ANEES AHMAD, M.D., JOHN PODESZWA, M.D., and  
ORANGE REGIONAL MEDICAL CENTER,

Defendants.

-----X

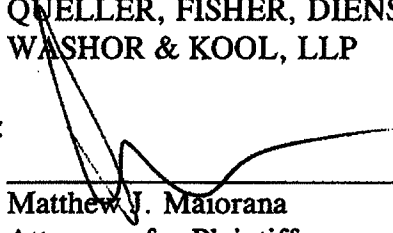
PLEASE TAKE NOTICE, that, pursuant to CPLR 3217(a)(1), plaintiff voluntarily  
discontinues this action without prejudice as against ANEES AHMAD, M.D.

Dated: New York, New York  
May 8, 2007

Yours, etc.,

QUELLER, FISHER, DIENST, SERRINS,  
WASHOR & KOOL, LLP

By:

  
\_\_\_\_\_  
Matthew J. Maiorana  
Attorneys for Plaintiff  
233 Broadway  
New York, New York 10279  
(212) 406-1700

To: Anees Ahmad, M.D.  
10 Benton Avenue  
Middletown, NY 10940

Anees Ahmad, M.D.  
15 Eldred Street  
Middletown, NY 10940

John J. Barbera, Esq.  
Martin, Clearwater & Bell, LLP  
Attorneys for John Podeszwa and Orange Regional Medical Center  
245 Main Street  
White Plains, NY 10601